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SURGICAL INSTRUMENT SERVICE
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff/
Counterclaim-Defendant

vs.

INTUITIVE SURGICAL, INC.,

Defendant/
Counterclaimant.

Case No.: 3:21-cv-03496-AMO-LB

**JOINT STIPULATION AND [PROPOSED]
ORDER REGARDING INTUITIVE'S
UNCLEAN HANDS DEFENSE AT TRIAL**

Judge: The Honorable Araceli Martínez-Olguín

1 Plaintiff Surgical Instrument Service Company, Inc. (“SIS”), and Defendant Intuitive
2 Surgical, Inc. (“Intuitive”) (collectively, the “Parties”) hereby stipulate as follows and respectfully
3 request that the Court endorse this stipulation with an order:

4 WHEREAS, on May 10, 2021, Plaintiff filed its Complaint, Dkt. 1;

5 WHEREAS, on December 14, 2021, Defendant filed its Answer, Affirmative Defense,
6 and Counterclaims, Dkt. 75;

7 WHEREAS, Defendant pleaded as an affirmative defense that “SIS’s claims are barred,
8 in whole or in part, by the doctrine of unclean hands because SIS has acted contrary to applicable FDA
9 regulations and/or engaged in other misconduct, including tortious interference with Intuitive’s contracts
10 and business relationships,” Dkt. 75 at 39;

11 WHEREAS, on June 11, 2024, the Court entered its Schedule and Pretrial Order, which
12 required the Parties to serve any motions in limine by October 28, 2024, Dkt. 235 at Section II.B;

13 WHEREAS, on October 28, 2024, Plaintiff served on Defendant Plaintiff’s Motion in
14 Limine #2, attached hereto as Exhibit B, through which Plaintiff “moves in limine to exclude all
15 testimony, evidence, and argument regarding [Defendant’s] First Affirmative Defense of Unclean
16 Hands” from trial in this matter, on the basis that “[t]his evidence is irrelevant under Fed. R. Evid. 401
17 as a matter of law,” Ex. B at 1;

18 WHEREAS, on November 1, 2024, Defendant provided to Plaintiff a draft stipulation,
19 attached hereto as Exhibit C, to resolve Plaintiff’s Motion in Limine #2;

20 NOW THEREFORE, the Parties jointly submit the Proposed Order attached hereto as
21 Exhibit A, which provides that the Parties jointly stipulate and agree that “Intuitive shall not present an
22 unclean hands defense to the jury at trial, and will not seek to offer any argument, testimony, or other
23 evidence in support of that defense at trial,” but that “[n]othing in this Stipulation in any way limits,
24 precludes, or prevents Intuitive from offering any argument, testimony, or other evidence that Intuitive
25 may present with respect to its Counterclaims, even if that evidence also may have been relevant to an
26 unclean hands defense.” The parties respectfully ask the Court to enter the Proposed Order attached
27

hereto as Exhibit A on the docket in this case. The parties further agree that this Stipulation renders moot Plaintiff's Motion in Limine #2.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: November 11, 2024

By: /s/ Richard T. McCaulley

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*Attorneys for Plaintiff Surgical Instrument
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Dated: November 11, 2024

By: /s/ Kenneth A. Gallo

Kenneth A. Gallo

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E-Filing Attestation

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above have concurred in this filing.

/s/ Kenneth A. Gallo